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MAY 24 2004

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MAY 24 2004

OFFICE OF THE DIRECTOR  
TC 3600

In re Application of  
Charles M. Schmeichel  
Application No. 09/866,138  
Filed: May 25, 2001  
For: TONNEAU COVER TENSION ADJUSTER  
APPARATUS

DECISION ON PETITION  
TO WITHDRAW THE  
HOLDING OF ABANDONMENT

This is in response to applicants' petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on February 20, 2004.

The petition is **DENIED**.

A review of the file record indicates applicants filed a response to a non-final Office action May 6, 2003, but it was held non-responsive because the amendment did not conform to 37 CFR 1.173 regarding amendment of claims in a reissue application. A Notice to that effect was mailed on June 11, 2003 setting forth a one month extendable reply period. A subsequent amendment was filed on July 25, 2003 and that response was also held non-responsive for the same reason. Since the period to file a proper response had expired, a Notice of Abandonment was mailed on January 26, 2004, indicating that the response filed July 25, 2003 does not conform with Rule 173 (see box 7).

Applicant's petition appears to suggest that the application was abandoned because the Office did not receive the July 25, 2003 response. However, as noted above the response was received and acted on by the examiner. Thus, there is no Office error and the application is properly abandoned.

Applicants may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

I. Unavoidable Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(l); and (3) an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date

for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

## II. Unintentional Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The petition fee required by law for filing a petition under unavoidable standard is \$110. The fee for a petition under the unintentional standard is \$1,330. If applicants have, or can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive. The required items should be promptly submitted under a cover letter entitled "Petition to Revive."

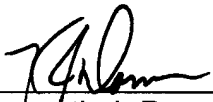
Further correspondence with respect to a petition to revive should be addressed as follows:

By Mail:      Mail Stop Petition  
                 Commissioner for Patents  
                 P.O. Box 1450  
                 Alexandria, VA 22313-1450

By Fax:        (703) 308-6916  
                 Attn: Office of Petitions

By Hand:      Crystal Plaza 4, Suite 3C23  
                 2201 South Clark Place  
                 Arlington, VA 22202

Telephone inquiries should be directed to the Office of Petitions Staff at (703) 305-9285.

  
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KJD/mjz: 5/18/04